IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR Nos.3 and 4 of 1993
Date of decision:20.11.2006

The Commissioner of Income Tax, (Central) Ludhiana

....Petitioner

versus

M/s. Kishan Chand & Co. Oil Industries Limited, Ludhiana

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. SK Garg Narwana, Advocate, for the revenue.
Mr. Rohit Sood, Advocate, for the respondent.

JUDGMENT:

Following questions of law have been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal'), arising out of its order dated 19.7.1991 in ITA No.1222/Chandi/87, for assessment year 1983-84:-

> "1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in deleting the addition of Rs.12,60,000/- made at the assessment stage in lieu of alleged unexplained investment in stock pledged/hypothecated by the assessee with its bankers and which, according to the revenue, was excess of stock held by the assessee company?
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> 2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in deleting the addition of Rs.3,17,837/- representing the profit earned from the excess stock found and its sale outside the books of account in spite of the established fact that the assessee had been found indulging in such practices and additions so made were sustained by the first appellate authority?"

The Assessing Officer made addition to the income of the

assessee on the basis of peak value of stock pledged with the bank as per the statement furnished to the bank which was at variance with the statement of stock in the account books of the assessee. This was upheld by the appellate authority. The Tribunal set aside the said finding with the following observations:-

> "5. On our part, we will delete the addition, inter alia, for the reasoning that the assessment order so reveals as also the order of the ld. first appellate authority that excess has been worked out on dates which fall midway in the accounting period relevant to the assessment year under appeal like 9.9.82, 15.9.82 and 7.10.82 and if we take the dates of the ld Sr Departmental representatives, then these are 23.9.82 and 7.10.82. The accounting period of the assessee ended on 31.3.1983., the accounts are made up of the full period involved what we call the accounting period relevant to assessment year under appeal and if there were excess in midway in the accounting period relevant to an assessment year, as in the case here, than like fiction the exercise done by the Assessing Officer ought to have been taken to its logical and, i.e., upto the last day of the accounting period/previous year and this having not been done, the excess in midway i.e., on the dates falling in the accounting period but not on the last day of the previous year, will not justify the addition. The accounts are to be made up for a period of 12 months, i.e., for the full accounting period or the previous year ending on 31.3.83, relevant to the assessment year under appeal, and the assessment has to be framed in relation to a previous year relevant to an assessment year as the mandate is given by the substantive section of the Income Tax Act, 1961 viz., section 4. The said section speaks of , "where any Central Act enacts that income tax shall be charged for any assessment year at any rate or rates, income tax at that rate of those rates shall be charged for that year in accordance with and subject to the provisions of the Act in respect of the total income of the previous year" emphasis is placed here for the purposes of this appeal on the words 'total income of the previous year' Midway on the three dates, when the Assessing Officer has worked out, so to any, the excess i.e. On 9.9.82, 15.9.82 and 7.10.82, the excess cannot be said to be relatable to previous year because it ends, for all intents and purposes, on 31st March, 1983. The addition as such stands deleted and on this issue the assessee succeeds..."

We have heard learned counsel for the revenue and perused the findings recorded.

An inference of undisclosed income may be drawn from unexplained investment in stock which may, in a given case, be evidenced by stock statements furnished to the bank in a hypothecation or pledged account. However, statement furnished to the bank cannot be conclusive even if at variance with the stock register of the assessee. If assessee explains to the satisfaction of the assessing authority that entry in the stock register was correct, there is no legal bar to such a stock register being accepted as correct. In every case, this will have to be examined as a question of fact.

The Tribunal, as already observed, has held that the bank statements were in midway in the accounting period while the stock statement taken into account for assessment was as on 31.3.1983. The Tribunal accepted the said stock statement to be correct.

In view of the finding recorded, the Tribunal was justified in deleting the addition made on the basis of statement furnished to the bank and also in deleting the addition of profit on that basis.

We find that order passed by the Tribunal in the case of **Chauhan Papers Pvt. Limited,** taking the same view, was upheld by this Court while dismissing ITA No.358 of 2006 on October 12, 2006.

Accordingly, the question referred is answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 20, 2006
'gs'

(Rajesh Bindal)
Judge